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OFFICE OF PETITIONS

FISH & RICHARDSON, PC
12390 EL CAMINO REAL
SAN DIEGO, CA 92130-2081

In re Application of :
Lee : DECISION ON APPLICATION FOR
Application No. 09/606,804 : PATENT TERM ADJUSTMENT
Filed: June 28, 2000 :
Atty. Dkt. No.: 06666-040001 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER" filed July 26, 2004.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED**.

The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance and Issue Fee Due reflects an adjustment of 337 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicant requests that the Determination of Patent Term Adjustment be corrected from 89 days as indicated on the Determination of Patent Term Adjustment mailed June 4, 2004 to an adjustment of 337 days.

Applicant argues that the application is entitled to an adjustment of 400 days for Office delays under 37 CFR 1.702(a)(1). Applicant further argues that the adjustment of 400 days should be reduced 63 days for applicant's failure to engage in reasonable efforts to conclude prosecution.

A review of the application history reveals under 37 CFR 1.702(a)(1), an adjustment of 400 days can be attributed to the Office for failure to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed¹. In accordance with 37 CFR 1.703(a)(1),

¹ At the time of Determination of PTA, August 18, 2001, the date of mailing of Notice to Comply, was errantly entered as the date of mailing of first notification under 35 USC 132.

the delay began August 29, 2001, the day after the date that is fourteen months after the date on which the application was filed, and ending October 2, 2002, the date a restriction requirement was mailed.

The adjustment of 400 days is reduced 63 days under 37 CFR 1.704(b) for applicant's failure to reply within three months from the date the non-final Office action mailed on May 1, 2003. The reduction began August 2, 2003, the day after the date that is three months after the date of mailing of the non-final Office action, and ended October 3, 2003, the date a reply was submitted.

Thus, at the time of Allowance, the application was entitled to an adjustment of 337 days as argued by applicant.

Receipt of the required application fee of \$200.00 is hereby acknowledged.

The application file is being forwarded to the Publications Division for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

Karin A Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation